

1 WILLIAM F. WRAITH, SBN 185927
2 WRAITH LAW
3 24422 Avenida de la Carolota, Suite 400
4 Laguna Hills, California 92653
5 Tel: (949) 452-1234
6 Fax: (949) 452-1102

7 Attorney for Plaintiff
8 Environmental Research Center

9 JUDITH PRAITIS (Bar No. 151303)
10 AMY P. LALLY (Bar No. 198555)
11 SIDLEY AUSTIN LLP
12 555 West Fifth Street, Suite 4000
13 Los Angeles, California 90013-1010
14 Telephone: (213) 896-6000
15 Facsimile: (213) 896-6600

16 Attorneys for Defendant
17 Piping Rock Health Products, LLC

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
19 CENTRAL DISTRICT, STANLEY MOSK COURTHOUSE

20 ENVIRONMENTAL RESEARCH
21 CENTER, a California non-profit
22 corporation,

23 Plaintiff,

24 vs.

25 PIPING ROCK HEALTH PRODUCTS,
26 LLC and DOES 1-25, Inclusive,

27 Defendants.

28) **Case No.: BC543392**

) **[PROPOSED] CONSENT JUDGMENT**

29 **1. INTRODUCTION**

30 **1.1** This Action arises out of the alleged violations of California's Safe Drinking
31 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5
32 *et seq.* (also known as and herein after referred to as "Proposition 65") regarding the following
33 products (hereinafter collectively the "Covered Products" or "Covered Product" to refer to a

1 single product):

- 2 (1) Piping Rock Health Products Max Whole Greens Whole Foods Multi
- 3 (2) Piping Rock Health Products Natural Triple Action Herbal Laxative
- 4 (3) Piping Rock Health Products Milk Thistle, Dandelion & Yellow Dock Combo
- 5 (4) Piping Rock Health Products Ultimate Colon Cleansing Formula
- 6 (5) Piping Rock Health Products Detox
- 7 (6) Piping Rock Health Products Max Whole Greens Whole Foods Powder
- 8 (7) Piping Rock Health Products Whole Husk Psyllium Vegetarian Powder
- 9 (8) Piping Rock Health Products Triple Action Colon Cleanser Vegetarian Powder
- 10 (9) Piping Rock Health Products LLC Tiger Snake
- 11 (10) Piping Rock Health Products LLC Fruit & Veggies for Life
- 12 (11) Piping Rock Health Products LLC Natural Vegetarian Spirulina Blue-Green
- 13 Algae Powder
- 14 (12) Piping Rock Health Products LLC Maca Powder Vegetarian Powder
- 15 (13) Piping Rock Health Products LLC Psyllium Husk Powder Vegetarian Powder
- 16 (14) Piping Rock Health Products LLC Menopause Ease
- 17 (15) Piping Rock Health Products LLC Ultimate Horny Goat Weed Complex
- 18 (16) Piping Rock Health Products LLC Garcinia Cambogia 500 MG
- 19 (17) Piping Rock Health Products LLC Triple Action Fiber Complex
- 20 (18) Piping Rock Health Products LLC Shark Cartilage 750 mg
- 21 (19) Piping Rock Health Products LLC Dong Quai 1000 MG
- 22 (20) Piping Rock Health Products LLC Stinging Nettles 500 MG
- 23 (21) Piping Rock Health Products LLC Cinnamon Gymnema Mulberry Complex
- 24 750 MG
- 25 (22) Piping Rock Health Products LLC Ultra Energy Booster
- 26 (23) Piping Rock Health Products LLC Ashwagandha 460 MG
- 27 (24) Piping Rock Health Products LLC Bacopa 500 MG
- 28 (25) Piping Rock Health Products LLC Fertility Blend

- 1 (26) Piping Rock Health Products LLC White Willow Bark 400 MG
- 2 (27) Piping Rock Health Products LLC Double Strength Circulation Complex
- 3 (28) Piping Rock Health Products LLC Beet Root 500 MG
- 4 (29) Piping Rock Health Products LLC Super Fiber Complex
- 5 (30) Piping Rock Health Products LLC Aller-7
- 6 (31) Piping Rock Health Products LLC Noni 400 MG
- 7 (32) Piping Rock Health Products LLC Butcher's Broom 470 MG
- 8 (33) Piping Rock Health Products LLC ProstAid Herbal Complex
- 9 (34) Piping Rock Health Products LLC Alfalfa 500 MG
- 10 (35) Piping Rock Health Products LLC Turmeric 410 MG
- 11 (36) Piping Rock Health Products LLC Fenugreek 610 MG
- 12 (37) Piping Rock Health Products LLC Echinacea and Goldenseal Root
- 13 (38) Piping Rock Health Products LLC Devil's Claw 510 MG
- 14 (39) Piping Rock Health Products LLC Ginger Root 550 MG
- 15 (40) Piping Rock Health Products LLC Calm Caps
- 16 (41) Piping Rock Health Products LLC Sleep Activator with Melatonin
- 17 (42) Piping Rock Health Products LLC Yohimbe Bark Powder 320 MG
- 18 (43) Piping Rock Health Products LLC Reishi Mushroom 500 mg
- 19 (44) Piping Rock Health Products LLC Bitter Melon 450 MG
- 20 (45) Piping Rock Health Products LLC Blood Sugar Complex with Cinnamon
- 21 Extract
- 22 (46) Piping Rock Health Products LLC Spirulina Super Blue-Green Algae 500 MG
- 23 (47) Piping Rock Health Products LLC Korean Ginseng 500 MG
- 24 (48) Piping Rock Health Products LLC Neem Leaf 475 mg
- 25 (49) Piping Rock Health Products LLC Hawthorn Berries 565 MG.

26 All sizes and all forms of packaging of any Covered Products are referred to as
27 "Covered Products" hereunder.
28

1 **1.2** Plaintiff Environmental Research Center, Inc. (“ERC”) is a California non-profit
2 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
3 causes, helping safeguard the public from health hazards by reducing the use and misuse of
4 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
5 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
6 to California Health and Safety Code Section 25249.7.

7 **1.3** PIPING ROCK HEALTH PRODUCTS, LLC (“PIPING ROCK”) is a New York
8 Limited Liability Company and at all relevant times for purposes of this Consent Judgment,
9 employed ten or more persons, and qualified as a “person in the course of doing business” within
10 the meaning of Proposition 65. PIPING ROCK either manufactures, distributes, or sells the
11 Covered Products to California consumers.

12 **1.4** ERC and PIPING ROCK are hereinafter sometimes referred to individually as a
13 “Party” or collectively as the “Parties.”

14 **1.5** On January 31, 2014, pursuant to California Health and Safety Code Section
15 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”) on
16 the California Attorney General, other public enforcers, and PIPING ROCK. A true and correct
17 copy of the Notice of Violation is attached hereto as Exhibit A.

18 **1.6** During the 60 day period following PIPING ROCK’S receipt of the Notice of
19 Violations, PIPING ROCK added warnings pursuant to Proposition 65 to its invoices as well as
20 to its web site purchasing process for each of the Covered Products.

21 **1.7** On April 28, 2014, after more than sixty (60) days passed since service of the
22 Notice of Violations, and no designated governmental prosecutor filed a complaint against
23 PIPING ROCK with regard to the Covered Products or the alleged violations, ERC filed the
24 Complaint in this Action (the “Complaint”) for injunctive relief and civil penalties. The
25 Complaint is based on the allegations in the Notice of Violations.

26 **1.8** The Complaint and the Notice of Violations each allege that PIPING ROCK
27 manufactured, distributed, and/or sold to California consumers the Covered Products, which
28 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and

1 expose consumers at a level requiring a Proposition 65 warning. They further allege that use of
2 the Covered Products exposes persons in California to lead without first providing clear and
3 reasonable warnings, in violation of California Health and Safety Code Section 25249.6. PIPING
4 ROCK denies all material allegations of the Notices of Violation and the Complaint, asserts
5 numerous affirmative defenses, and specifically denies that the Covered Products require a
6 Proposition 65 warning or otherwise cause harm to any person.

7 **1.9** The Parties enter into this Consent Judgment in order to settle, compromise and
8 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
9 Judgment, nor compliance with its terms, shall constitute or be construed as an admission against
10 interest by any of the Parties, or by any of their respective officers, directors, shareholders,
11 employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees,
12 licensees, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of law,
13 violation of law, fault, wrongdoing, or liability, including without limitation, any admission
14 concerning any alleged violation of Proposition 65. Except as expressly set forth herein, nothing
15 in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or
16 defense the Parties may have in any other or future legal proceeding unrelated to these
17 proceedings. However, nothing in this Section shall affect the enforceability of this Consent
18 Judgment.

19 **1.10** The “Effective Date” of this Consent Judgment shall be the date this Consent
20 Judgment is entered by the Court.

21 **2. JURISDICTION AND VENUE**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
24 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment
25 pursuant to the terms set forth herein.

26 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

27 **3.1** Beginning on the Effective Date, PIPING ROCK shall be permanently enjoined
28 from manufacturing for sale in California, directly selling to a consumer in California or

1 “Distributing into California” any of the Covered Products for which the maximum daily dose
2 recommended on the label contains more than 0.5 micrograms of lead, unless such Covered
3 Product complies with the warning requirements in Section 3.3. “Distributing into California”
4 and “Distribute into California” means PIPING ROCK directly ships any of the Covered
5 Products into California for sale in California, or sells any of the Covered Products to a
6 distributor that PIPING ROCK knows will sell the Covered Products in California.

7 **3.2 Calculation of Lead Levels**

8 As used in this Consent Judgment, lead levels are calculated pursuant to the testing
9 protocol described in Section 3.4. For all purposes of measuring the lead in a Covered Product
10 under this Consent Judgment, the second highest lead detection result of at least 3 and up to 5
11 randomly selected samples of the Covered Product tested for purposes of this Consent Judgment
12 will be controlling. Only valid test results subject to proper quality control/quality assurance
13 protocols shall be used to calculate the lead detection result for a Covered Product.

14 **3.3 Clear and Reasonable Warnings.**

15 For those Covered Products that are subject to the warning requirement of Section 3.1,
16 PIPING ROCK shall provide the following warning:

17 **[Proposition 65] WARNING: This product contains [lead,] a chemical**
18 **known to the State of California to cause [cancer and] birth defects or other**
19 **reproductive harm.**

20 The text in brackets in the warning above is optional in PIPING ROCK’S sole discretion,
21 except that the term “cancer” must be included if the maximum daily dose recommended on the
22 label contains more than 15 micrograms of lead.

23 The warning shall be prominently affixed to or printed upon the packing slip
24 accompanying the order for a Covered Product so as to be clearly conspicuous, as compared with
25 other statements or designs on the label as to render it likely to be read and understood by an
26 ordinary purchaser or user of the product. The packing slip warning shall be displayed so that it
27 is clear as to which Covered Product the warning applies. The warning shall be at least the same
28 size as the largest of any other health or safety warnings on the invoice and the word

1 **“WARNING”** shall be in all capital letters and in bold print.

2 In addition to the packing slip warning accompanying an order, and because the Covered
3 Products are sold predominantly via PIPING ROCK’S website, a second warning shall appear
4 prior to completing checkout on PIPING ROCK’S website when a California delivery address is
5 indicated. The website purchaser shall be required to accept the warning prior to completing
6 checkout for any of the Covered Products being sold. PIPING ROCK is not responsible for any
7 warning statements made, or not made, on any third party website, but PIPING ROCK shall
8 provide any applicable packing slip warnings accompanying those orders it fulfills.

9 PIPING ROCK shall not alter the warning text above unless PIPING ROCK files a
10 noticed motion (including service on the Office of the Attorney General) to modify this Consent
11 Judgment and the Court grants such motion. No other statements about lead or Proposition 65
12 may be included on or near the warning text.

13 **3.4 Testing and Quality Control Methodology**

14 (a) Beginning within one year of the Effective Date, PIPING ROCK shall test at least
15 three (3) and up to five (5) randomly selected samples of each of the Covered Products (in the
16 form intended for sale to the end-user) for lead content. The second highest lead detection result
17 of the samples tested for purposes of this Consent Judgment shall be controlling for purposes of
18 Sections 3.1 through 3.4. The testing requirements of this Consent Judgment do not apply to any
19 of the Covered Products for which PIPING ROCK has provided the warning specified in Section
20 3.3. Nothing in this Consent Judgment limits or impairs PIPING ROCK’S ability to conduct
21 testing for lead in any Covered Product or in any ingredient for any purpose.

22 (b) All testing for lead shall be performed using Inductively Coupled Plasma-Mass
23 Spectrometry (“ICP-MS”) or any other testing method subsequently agreed to in writing by the
24 Parties.

25 (c) All testing pursuant to this Consent Judgment shall be performed by an
26 independent third party laboratory certified by the California Environmental Laboratory
27 Accreditation Program or a laboratory that is registered with the United States Food & Drug
28 Administration.

1 (d) PIPING ROCK shall retain all test results and documentation for testing required
2 under this Consent Judgment for a period of four (4) years from the date of the test. PIPING
3 ROCK shall provide copies of such test results to ERC within fifteen (15) business days of
4 receipt of a written request, if requested pursuant to Section 10.

5 (e) If required under this Consent Judgment, PIPING ROCK shall test each of the
6 Covered Products at least once a year for a minimum of four (4) consecutive years by testing at
7 least three (3) and up to five (5) randomly selected samples of each Covered Product which
8 PIPING ROCK is manufacturing for sale in California, directly selling to a consumer in
9 California, or "Distributing into California." The testing obligations under this Consent
10 Judgment terminate four (4) years after the Effective Date; provided, however, nothing in this
11 Consent Judgment shall excuse PIPING ROCK's obligations to provide warnings under the
12 terms and conditions set out in this Section 3.

13 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be
14 measured in micrograms, and shall be calculated using the following formula: Micrograms of
15 lead per gram of product, multiplied by grams per serving of the product (using the largest
16 serving size recommended on the product label), multiplied by servings of the product per day
17 (using the largest number of servings in the recommended dosage appearing on the product
18 label), which equals micrograms of lead exposure per day.

19 **4. SETTLEMENT PAYMENT**

20 **4.1** PIPING ROCK shall make a total payment of \$98,000.00 ("Total Settlement
21 Amount") within 5 business days of the Effective Date, which shall be in full and final
22 satisfaction of all potential civil penalties, payment in lieu of civil penalties, and attorney's fees
23 and costs. Piping Rock shall make this payment by wire transfer to ERC's escrow account, for
24 which ERC will give Piping Rock the necessary account information. The Total Settlement
25 Amount shall be disbursed by ERC as follows:

26 **4.2** \$20,000.00 as a civil penalty pursuant to California Health and Safety Code
27 Section 25249.7(b)(1). Of this amount, \$15,000.00 shall be disbursed to the Office of
28 Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water

1 and Toxic Enforcement Fund in accordance with California Health and Safety Code Section
2 25249.12(c); \$5,000.00 shall be disbursed payable to ERC as 25% of the civil penalty. ERC's
3 will forward to OEHHA the portion of the civil penalty payable to OEHHA.

4 **4.3** \$19,266.65 shall be disbursed to ERC as reimbursement to ERC for its reasonable
5 costs associated with the enforcement of Proposition 65 in this case including issuing the Notice
6 of Violations, filing the Complaint and negotiating a settlement in the public interest.

7 **4.4** \$39,351.00 shall be disbursed to William F. Wraith as reimbursement of ERC's
8 attorney's fees and attorney's costs and \$19,382.35 shall be distributed to ERC as reimbursement
9 for ERC's in-house attorney's fees.

10 **5. COSTS AND FEES**

11 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'
12 fees, costs and expenses in this action.

13 **6. RELEASE**

14 **6.1** ERC, acting on its own behalf and in the public interest, hereby releases and
15 discharges PIPING ROCK and its officers, directors, shareholders, members, employees, agents,
16 representatives, parent companies, subsidiaries (whether now existing or formed or acquired
17 after the Effective Date), divisions, subdivisions, affiliates, franchisees, licensees, successors,
18 assigns, distributors, retailers, manufacturers of Covered Products and attorneys (collectively,
19 "Released Parties") from all claims for violations of Proposition 65 up through the Effective
20 Date based on the allegations of exposure to lead in the Covered Products as set forth in the
21 Notice of Violations and the Complaint.

22 **6.2** Compliance with the terms of this Consent Judgment constitutes compliance by
23 the Released Parties with Proposition 65 with respect to consumer exposures to lead in the
24 Covered Products as set forth in the Notice of Violations and the Complaint.

25 **6.3** ERC on behalf of itself only, on the one hand, and PIPING ROCK, on the other
26 hand, hereby release and waive all claims they may have against each other and their respective
27 officers, directors, shareholders, members, employees, agents, representatives, parent companies,
28 subsidiaries (whether now existing or formed or acquired after the Effective Date), divisions,

1 subdivisions, affiliates, franchisees, licensees, successors, assigns, distributors, retailers,
2 manufacturers of Covered Products and attorneys for any statements or actions made or
3 undertaken by them or their respective officers, directors, employees, agents, representatives and
4 attorneys up through the Effective Date in connection with the Notice of Violations or this
5 action.

6 **6.4** Nothing in this release is intended to apply to any occupational or environmental
7 exposures arising under Proposition 65, nor shall it apply to any products other than the Covered
8 Products.

9 **7. MOTION FOR COURT APPROVAL**

10 **7.1** Upon execution of this Consent Judgment by the Parties, ERC shall prepare,
11 notice, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
12 Code of Regulations § 3000, *et seq.* This motion shall be served upon PIPING ROCK and upon
13 the California Attorney General's Office.

14 **7.2** If, after service of the Motion for Approval & Entry of Consent Judgment, the
15 California Attorney General objects in writing to any term in this Consent Judgment or files an
16 opposition to ERC's motion to approve, the Parties shall meet and confer with the Attorney
17 General to resolve the concern in a timely manner prior to the hearing on the motion. If the
18 objection of the California Attorney General is not resolved prior to the hearing on the motion,
19 any Party may withdraw from this Consent Judgment prior to the date of the hearing, with notice
20 to all Parties in accordance with Paragraph 17 below and notice to the California Attorney
21 General's Office, and upon such notice this Consent Judgment shall be null and void.

22 **7.3** This Consent Judgment shall be effective only after it has been entered by the
23 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
24 any purpose.

25 **8. RETENTION OF JURISDICTION**

26 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this
27 Consent Judgment.

28 ///

1 **9. MODIFICATION OF CONSENT JUDGMENT**

2 After its entry by the Court, this Consent Judgment may be modified only upon written
3 motion of a Party, or a joint motion of the Parties, and upon entry of a modified Consent
4 Judgment by the Court thereon.

5 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**
6 **RESOLVE DISPUTES**

7 In the event a dispute arises with respect to any Party's compliance with the terms and/or
8 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of
9 another Party shall make a good faith attempt to resolve the dispute by conferring with the other
10 Party in person, by telephone or by written communication before seeking relief from the Court.
11 If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in
12 this Court pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law.
13 The prevailing party in any such dispute brought to this Court for resolution shall be awarded the
14 reasonable costs and attorney's fees actually incurred in the matter. As used in the preceding
15 sentence, the term "prevailing party" means a party who is successful in obtaining relief more
16 favorable to it than the relief the other party was agreeable to providing during the Parties' good
17 faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.

18 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

19 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions
20 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable
21 provisions shall not be adversely affected.

22 **12. GOVERNING LAW**

23 The terms and conditions of this Consent Judgment shall be governed by and construed in
24 accordance with the laws of the State of California.

25 **13. RELATION TO OTHER ACTIONS**

26 This Consent Judgment shall have no application or effect on PIPING ROCK for sales of
27 the Covered Products to persons outside the State of California.

28 ///

1 **14. DRAFTING**

2 The terms of this Consent Judgment have been reviewed by the respective legal counsel
3 for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the
4 terms and conditions with its legal counsel. The Parties agree that, in any subsequent
5 interpretation or construction of this Consent Judgment, no inference, assumption or presumption
6 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,
7 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or
8 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the
9 Parties participated equally in the preparation and drafting of this Consent Judgment.

10 **15. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all
13 prior agreements or understandings, written or oral, with regard to the matters set forth herein.
14 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall
15 be deemed to exist or to bind any of the Parties.

16 **16. EXECUTION IN COUNTERPARTS**

17 This Consent Judgment may be executed in counterparts, which taken together shall be
18 deemed to constitute one document. A facsimile or pdf signature shall be construed as valid as
19 the original signature.

20 **17. NOTICES**

21 All notices required by this Consent Judgment to be given to any Party shall be sent by
22 first-class registered or certified mail, or overnight delivery, and shall be deemed delivered on
23 the date of receipt, to all of the following:

24 **For Environmental Research Center**

25 Chris Heptinstall, Executive Director
26 Environmental Research Center
27 3111 Camino del Rio North, Suite 400
28 San Diego, CA 92108
Tel: 619-500-3090
Fax: 706-858-0326

1 William F. Wraith, Esq.
2 Wraith Law
24422 Avenida de la Carolota, Suite 400
3 Laguna Hills, California 92653
Tel: (949) 452-1234
4 Fax: (949) 452-1102
bill@wraithlaw.com

5 **For Piping Rock Health Products, LLC**

6 Judith Praitis, Esq.
7 Sidney Austin LLP
555 West Fifth Street, Suite 4000
8 Los Angeles, California 90013-1010
Telephone: (213) 896-6000
9 Facsimile: (213) 896-6600
jpraitis@sidley.com

10 With a copy to: - PIPING ROCK HEALTH PRODUCTS, LLC
2120 Smithtown Avenue
11 Ronkonkoma, NY 11779
Attention: General Counsel
12 631-778-8199 (ph)
631-885-8057 (fax)

13 Courtesy copies of communications shall be sent to counsel via e-mail upon sending of
14 communications hereunder.

15 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

16 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is
17 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment
18 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,
19 and to legally bind that Party to this Consent Judgment. Each person signing this Consent
20 Judgment on behalf of a Party represents and warrants that he or she has read and understands
21 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
22 behalf of that Party.

23 **IT IS SO STIPULATED:**

24 **ENVIRONMENTAL RESEARCH CENTER**

25 
26 _____
27 Chris Hepinstall, Executive Director

Dated: 9/29/2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PIPING ROCK HEALTH PRODUCTS, LLC

Michael Rudolph
By: Michael Rudolph
Its: President, Piping Rock Health Products, LLC

Dated: 9/29/2015

**APPROVED AS TO FORM:
WRAITH LAW**

William F. Wraith
William F. Wraith
Attorney for Environmental Research Center

Dated: _____

SIDNEY AUSTIN LLP

Judith Praitis
Judith Praitis
Amy P. Lally
Attorneys for Defendant Piping Rock Health Products, LLC

Dated: _____

ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.
IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

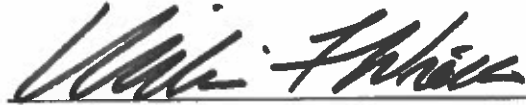
Judge, Superior Court of the State of California

1 PIPING ROCK HEALTH PRODUCTS, LLC

2
3
4 By:
Its:

Dated: _____

5 APPROVED AS TO FORM:
6 WRAITH LAW

7 

Dated: 9/29/2015

8 William F. Wraith
9 Attorney for Environmental Research Center

10 SIDNEY AUSTIN LLP

11
12
13 Judith Praitis
14 Amy P. Lally
Attorneys for Defendant Piping Rock Health Products, LLC

Dated: _____

15
16 **ORDER AND JUDGMENT**

17 Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent
18 Judgment is approved and judgment is hereby entered according to its terms.

19 IT IS SO ORDERED, ADJUDGED AND DECREED.

20
21
22 Dated: _____

Judge, Superior Court of the State of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


PIPING ROCK HEALTH PRODUCTS, LLC

By: _____ Dated: _____
Its: _____

**APPROVED AS TO FORM:
WRAITH LAW**

William F. Wraith Dated: _____
Attorney for Environmental Research Center

SIDNEY AUSTIN LLP



Judith Praitis Dated: 9/29/15
Amy P. Lally
Attorneys for Defendant Piping Rock Health Products, LLC

ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.
IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

Judge, Superior Court of the State of California

EXHIBIT “A”

WRAITH LAW
16485 LAGUNA CANYON ROAD
SUITE 250
IRVINE, CALIFORNIA 92618
Tel (949) 251-9977
Fax (949) 251-9978

January 31, 2014

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Piping Rock Health Products, LLC

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. Piping Rock Health Products Max Whole Greens Whole Foods Multi - Lead**
- 2. Piping Rock Health Products Natural Triple Action Herbal Laxative - Lead**
- 3. Piping Rock Health Products Milk Thistle, Dandelion & Yellow Dock Combo - Lead**
- 4. Piping Rock Health Products Ultimate Colon Cleansing Formula - Lead**

5. Piping Rock Health Products Detox - Lead
6. Piping Rock Health Products Max Whole Greens Whole Foods Powder - Lead
7. Piping Rock Health Products Whole Husk Psyllium Vegetarian Powder - Lead
8. Piping Rock Health Products Triple Action Colon Cleanser Vegetarian Powder - Lead
9. Piping Rock Health Products LLC Tiger Snake- Lead
10. Piping Rock Health Products LLC Fruit & Veggies for Life - Lead
11. Piping Rock Health Products LLC Natural Vegetarian Spirulina Blue-Green Algae Powder - Lead
12. Piping Rock Health Products LLC Maca Powder Vegetarian Powder - Lead
13. Piping Rock Health Products LLC Psyllium Husk Powder Vegetarian Powder - Lead
14. Piping Rock Health Products LLC Menopause Ease - Lead
15. Piping Rock Health Products LLC Ultimate Horny Goat Weed Complex - Lead
16. Piping Rock Health Products LLC Garcinia Cambogia 500 MG - Lead
17. Piping Rock Health Products LLC Triple Action Fiber Complex - Lead
18. Piping Rock Health Products LLC Shark Cartilage 750 mg - Lead
19. Piping Rock Health Products LLC Dong Quai 1000 MG - Lead
20. Piping Rock Health Products LLC Stinging Nettles 500 MG - Lead
21. Piping Rock Health Products LLC Cinnamon Gymnema Mulberry Complex 750 MG - Lead
22. Piping Rock Health Products LLC Ultra Energy Booster - Lead
23. Piping Rock Health Products LLC Ashwagandha 460 MG - Lead
24. Piping Rock Health Products LLC Bacopa 500 MG - Lead
25. Piping Rock Health Products LLC Fertility Blend - Lead
26. Piping Rock Health Products LLC White Willow Bark 400 MG - Lead
27. Piping Rock Health Products LLC Double Strength Circulation Complex - Lead
28. Piping Rock Health Products LLC Beet Root 500 MG - Lead
29. Piping Rock Health Products LLC Super Fiber Complex - Lead
30. Piping Rock Health Products LLC Aller-7 - Lead
31. Piping Rock Health Products LLC Noni 400 MG - Lead
32. Piping Rock Health Products LLC Butcher's Broom 470 MG - Lead
33. Piping Rock Health Products LLC ProstAid Herbal Complex - Lead
34. Piping Rock Health Products LLC Alfalfa 500 MG - Lead
35. Piping Rock Health Products LLC Turmeric 410 MG - Lead
36. Piping Rock Health Products LLC Fenugreek 610 MG - Lead
37. Piping Rock Health Products LLC Echinacea and Goldenseal Root - Lead
38. Piping Rock Health Products LLC Devil's Claw 510 MG - Lead
39. Piping Rock Health Products LLC Ginger Root 550 MG - Lead
40. Piping Rock Health Products LLC Calm Caps - Lead
41. Piping Rock Health Products LLC Sleep Activator with Melatonin - Lead
42. Piping Rock Health Products LLC Yohimbe Bark Powder 320 MG - Lead
43. Piping Rock Health Products LLC Reishi Mushroom 500 mg - Lead
44. Piping Rock Health Products LLC Bitter Melon 450 MG - Lead
45. Piping Rock Health Products LLC Blood Sugar Complex with Cinnamon Extract- Lead
46. Piping Rock Health Products LLC Spirulina Super Blue-Green Algae 500 MG - Lead
47. Piping Rock Health Products LLC Korean Ginseng 500 MG - Lead
48. Piping Rock Health Products LLC Neem Leaf 475 mg - Lead
49. Piping Rock Health Products LLC Hawthorn Berries 565 MG - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 31, 2011, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Piping Rock Health Products, LLC only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Piping Rock Health Products, LLC

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

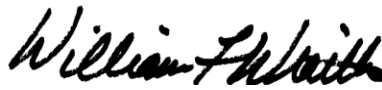
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 31, 2014



William F. Wraith

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On January 31, 2014, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

President or CEO
Piping Rock Health Products, LLC
2120 Smithtown Avenue
Ronkonkoma, NY 11779

President or CEO
Piping Rock Health Products, LLC
3900 Veterans Highway, Suite 310
Bohemia, NY 11716

On January 31, 2014, I electronically served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On January 31, 2014, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on January 31, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

January 31, 2014

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	